



Guideline

Income Tax Military Personnel

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Introduction

This guideline provides general information for preparing the North Dakota individual income tax return for military personnel.

State Income Tax Generally

Each state (including the District of Columbia) has the power to make its own income tax laws, and the treatment of military personnel varies widely from state to state. Therefore, it is strongly advised to contact the state in question to determine the tax treatment of military personnel.

Federal Soldiers' and Sailors' Civil Relief Act

The Federal Soldiers' and Sailors' Civil Relief Act applies to active duty members in the U.S. Army, the U.S. Navy, the U.S. Air Force, the U.S. Marine Corps, the U.S. Coast Guard, and officers of the U.S. Public Health Service. There are two provisions in the Act that override state income tax laws, which eliminates the burden of military personnel having to comply with the income tax laws in every state that they are stationed. The two provisions are:

Legal Residence. Since members of the U.S. Armed Forces are subject to orders that move them to different duty stations within and out of the continental United States, the Act provides that a military person's legal residence (or domicile) does not change just because the Federal Government assigns that person to a duty station in another state or country.

Military Compensation. The Act also provides that military compensation is taxable only by the state where the military person is a legal resident. This provision prevents a state (other than the state of legal residence) from imposing its income tax on the military person's active duty compensation earned while stationed in that state.

North Dakota Filing Requirements

Full-Year Resident. A North Dakota resident who is in the U.S. Armed Forces and who has a federal filing requirement is required to file a North Dakota individual income tax return for that same year (regardless of where they are stationed).

Full-Year Nonresident. A nonresident of North Dakota is required to file a North Dakota individual income tax return only if the following two conditions exist:

- You derived any gross income from North Dakota sources (listed below), and
- You are required to file a federal income tax return.

Part-Year resident. A part-year resident must file a North Dakota individual income tax return if the following two conditions exist:

- You derived gross income from any source while you were a resident of North Dakota or you derived any gross income from North Dakota sources (listed below) during the period you were a nonresident of North Dakota, and
- You are required to file a federal income tax return.

Gross Income From North Dakota Sources

(for full-year nonresidents and part-year residents only)

- Compensation for services performed in North Dakota (other than military pay), such as wages, salaries, tips, commissions and fees.
- Income from tangible property located in North Dakota, such as rents, oil royalties, and the gain from the sale of such property.
- Income from a trade or business carried on in North Dakota, whether in the form of a sole proprietorship, partnership or Subchapter S corporation.
- Income from an estate or trust, but only to the extent the income is derived from tangible property or a trade or business in North Dakota.
- Income from gambling activity carried on in North Dakota.

Forms

North Dakota provides two methods (two forms) to determine an individual's income tax liability. The tax liability is computed on Form ND-1 or the **optional** Form ND-2. The net tax liability computed on each form will differ. A taxpayer may file either form, whichever results in the lesser income tax liability.

Form ND-1 is filed by 95% of the taxpayers who file a North Dakota income tax return because it usually results in a lesser income tax liability than the optional Form ND-2.

Form ND-2 (the optional form) allows military exclusions where as Form ND-1 does not. For North Dakota residents and part-year residents who have included military pay or military retirement pay to North Dakota, the following exclusions are allowed:

- \$1,000.00 military pay received for active duty service.
- \$300.00 for each month (or fraction of a month) for those who served overseas for at least thirty days during the tax year.
(The total of these two exclusions cannot exceed the amount included in federal taxable income or the amount reported to North Dakota if filing as a part-year resident.)
- Up to \$5,000.00 of your military retirement pay, if you are at least 50 years old. (This exclusion is allowed only to the extent that your military retirement pay is included in federal taxable income on line 1, Schedule 2 (when filing as a resident) or North Dakota adjusted gross income on line 1B, Schedule 3 (when filing as a part-year resident). You must reduce this exclusion by any social security benefits received by you.

Qualifying for any of these exclusions does not mean that Form ND-2 should automatically be used. It is very possible that your net tax liability will be less on Form ND-1. Therefore, we suggest completing both forms before filing one of them.

Filing Status

The same filing status [(i.e., single, married filing joint return, married filing separate return, head of household, or qualifying widow(er)] used for federal income tax purposes must be used for North Dakota income tax purposes.

Exception to the Federal Filing Status

Married people who file a joint federal income tax return but had different states of residence during the year (one of which is North Dakota), must file their North Dakota individual income tax return with the filing status of Married Filing Separate. For purposes of this exception, you and your spouse had different states of residence if you fall into one of the following situations:

Full-year resident/Full-year nonresident- One spouse is full-year ND resident and the other spouse is a full-year nonresident.

Full-year resident/Part-year resident- One spouse is a full-year ND resident and the other spouse is a part-year ND resident.

Part-year resident/Full-year nonresident- One spouse is a part-year ND resident and the other spouse is a full-year nonresident.

If this exception applies, you must obtain Schedule SF and complete, before completing your North Dakota income tax return, Form ND-1 or ND-2.

Where To Get Forms and Assistance

Between 8:00 a.m. and 5:00 p.m. (Central Standard Time), Monday through Friday (except holidays), you may call (701) 328-3450. Speech or hearing impaired persons may call us through Relay North Dakota at 800-366-6888.

You may write to: Office of State Tax Commissioner, 600 E. Boulevard Ave. Dept. 127, Bismarck, ND 58505-0599.

Web site: You may also obtain forms, send messages or ask questions, and find other information on our Web site. The address is: www.nd.gov/tax.